LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
NOV 23 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 744

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

LEWIS W. PETTEWAY,
Counsel for Appellants.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Opinion below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	3
The questions are substantial	9
Appendix "A"—Opinion, findings of fact, conclusions of law and judgment of the District Court	11
Appendix "B"—Applicable statutes	20

Table of Cases Cited

Ex parte 162, Increased Railway Rates, Fares and Charges, 1946, 266 I.C.C. 537	4
Ex parte 166, Increased Freight Rates 1947, 269 I.C.C. 33; 270 I.C.C. 81; 270 I.C.C. 93 and 270 I.C.C. 403	4
Five Per Cent Case, 31 I.C.C. 351	9
Florida v. *U.S.*, 282 U.S. 194, 75 L. ed. 291	2
Increase in Florida Intrastate Rates, 278 I.C.C. 41	4
Knott v. *Chicago, B. & Q. R. Co.*, 230 U.S. 474, 47 L. ed. 1571	2
North Carolina v. *United States*, 325 U.S. 507, 89 L. ed. 1760	2

Statutes Cited

Interstate Commerce Act:	
Section 13(3) (49 U.S.C. 13(3))	3, 4
Section 13(a4) (49 U.S.C. 13(4))	3, 4
Section 15(a) (49 U.S.C. 15(a))	3, 4
United States Code, Title 28:	
Section 1253	2
Section 1336	3
Section 2101(b)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 444

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Plaintiffs submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause.

Opinion Below

The opinion of the District Court for the Northern District of Florida, Tallahassee Division, is unreported as of this date. A copy of the opinion, findings of fact, conclusions of law and judgment is attached hereto as Appendix A.

Jurisdiction

The judgment of the District Court was entered on July 17, 1951. A petition for appeal is presented to the District Court herewith, to-wit: on September 7, 1951. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Knott* v. *Chicago, B & Q R Co.*, 230 U. S. 474, 47 L. Ed. 1571; *Florida* v. *U. S.*, 282 U. S. 194, 75 L. Ed. 291, and *North Carolina* v. *United States*, 325 U. S. 507, 89 L. Ed. 1760.

Questions Presented

1. Does the Interstate Commerce Commission have authority to require railroads to increase their intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations?

2. Can intrastate shippers and receivers of freight be required lawfully by common carrier railroads to pay excessive and unreasonably high freight rates in order that said railroads may be able to recoup losses sustained through the operation of their passenger service?

3. Does the Interstate Commerce Commission have authority to enter an order requiring state-prescribed intrastate freight rates to be increased to the interstate level in the absence of an affirmative finding as to what contribu-

tion from intrastate traffic would constitute a fair proportion of the railroads' total income?

4. Does the Interstate Commerce Commission have authority to require railroads to increase state-prescribed intrastate freight rates to the interstate level when said Commission fails to affirmatively find:

(a) What contribution from intrastate traffic will constitute a fair proportion of the railroads' total income;

(b) What amount of revenue is required to enable the railroads to operate efficiently;

(c) That the intrastate railroad rates involved are less than compensatory or insufficient to cover the full cost of service; and

(d) That the maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of a nationally efficient and adequate transportation system?

Statutes Involved

Sections 13(3), 13(4), and 15a of the Interstate Commerce Act, (Title 49 USC 13(3), 13(4), and 15a). See Appendix B attached hereto.

Statement

This proceeding was brought by Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, against The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The

Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I.C.C. 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission, dated July 25, 1950, of which the report is made a part.

The order of the Interstate Commerce Commission directed the raising of rates and charges for the intrastate transportation of freight over the lines of all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in the Interstate Commerce Commission under provisions of Section 13(3), (4), and Section 15a of the Interstate Commerce Act, (Title 49 USC, 13(3), (4) and 15a). The circumstances leading to the investigation by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, 266 ICC 537, the Interstate Commerce Commission, in response to a petition filed by all Class I railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue, the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charges throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166, *Increased Freight Rates, 1947*, 269 ICC 33; 270 ICC 81; 270 ICC 93 and 270 ICC 403,

the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning carriers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the interstate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation (269 ICC 33).

In a second report in that proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC 81). In a third report (270 ICC 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In a fourth and final report in this nation-wide rate proceeding the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC 403).

Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, certain railroads operating in Florida made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In its Docket No. 1538 the Florida Commission granted the same increases allowed by the Interstate Commerce Commission in Ex Parte 162, except that no increases were allowed on (1) logs moving to the mills, (2) wet phosphate moving from the washer to the drying plant, (3) waste wood moving to retort or recovery plant, and (4) sugar cane moving to

the mills. Also, increases on pulpwood were limited to 9%.

In its Docket No. 1466, by a series of orders, the Florida Commission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte No. 166 proceeding.

In its Order No. 1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte No. 166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Florida.
3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.
4. No increases were allowed on fertilizer and fertilizing material.
5. Increases on road aggregates were limited to 10%.
6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the No. 1466(C) Order, the Florida Commission continued the 20% increases granted in its Order No. 1466(A) until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order No. 1466(D) these increases and exceptions were continued in effect until after the disposition of Docket No. 30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets Ex Parte No. 162 and No. 166, with the exception of 5% granted by the Interstate Commerce Commission in Ex Parte No. 166 and the commodity and class rate exceptions hereinbefore enumerated.

The railroads instituted a 13th Section proceeding before the Interstate Commerce Commission (Docket No. 30140) for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to increase the Florida intrastate rates to the same level as the interstate rates approved by the Interstate Commerce Commission in Dockets Ex Parte 162 and Ex Parte 166.

Subsequently, the Interstate Commerce Commission issued its order making the full interstate rates prescribed by it effective on intrastate traffic in Florida.

That Order gave rise to this suit.

The District Court pointed out that:

> "The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations."

The question, therefore, before the Court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

The Florida Commission, Appellants here, contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service.

The Florida Commission also contends that the order of the Interstate Commerce Commission nullifying Florida intrastate rates is not based upon clear findings, supported by evidence, of each element essential to the exercise of that power by the Federal Agency.

In its order the Interstate Commerce Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income; the Commission made no findings as to what amount of revenue was required to enable those railroads to operate efficiently; the Commission did not find that the Florida intrastate rates involved were less than compensatory or insufficient to cover the full cost of service; and the Commission did not find that maintenance of intrastate rates at the same level as interstate rates was necessary to the operation of a nationally efficient and adequate transportation system. These are all essential findings but they were not made in the present case and cannot be made because there is no evidence in the record to support them. There is nothing in this record but a disparity in rates and that is not enough to justify the Interstate Commerce Commission in striking down state-prescribed intrastate rates.

The District Court sustained the order of the Interstate Commerce Commission and from the final judgment of the District Court the Florida Commission has brought this appeal to the Supreme Court.

The Questions Are Substantial

The questions presented by this appeal are substantial and are of considerable public importance.

The Supreme Court has never before passed upon the question of whether or not intrastate shippers and receivers of freight can be lawfully required by the Interstate Commerce Commission in the exercise of its 13th Section powers to pay excessive and unreasonably high freight rates so as to enable railroad carriers to recoup losses incurred in their passenger operations.

The Interstate Commerce Commission in the Five Percent Case, 31 ICC 351, said that:

> "We know of no provision of law under which we should be justified in increasing freight rates to provide a return upon property used exclusively in the passenger service, much less to take care of losses incurred in such service. In our opinion each branch of the service should contribute its proper share of the cost of operation and of return upon the property devoted to the use of the public."

More recently the Interstate Commerce Commission has come to the conclusion that it feels "compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges." And, by way of explanation, the Commission has said that "Naturally, this course is borne out of the exigencies of the industry, and leaves us free for subsequent examination of the question when particularized by complaint or in an investigation of our own."

The Interstate Commerce Commission, the railroads, the public and the state regulatory agencies are entitled to a decision by the Supreme Court on this difficult and vexing question.

The remaining questions in this appeal have been decided many times by the Supreme Court. Nevertheless, the order of the Interstate Commerce Commission and the final judgment of the District Court in this proceeding fail to make the findings which the Supreme Court has said are essential to the exercise of the powers conferred by the 13th Section of the Interstate Commerce Act. Because the order of the Interstate Commerce Commission was not based on adequate findings, supported by evidence, the District Court should have declined to enforce its order.

Respectfully submitted,

LEWIS W. PETTEWAY,
Counsel for Plaintiffs.

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION.

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER, and RICHARD A. MACK, as and Constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Plaintiffs*,

vs.

THE UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*

Before: McCORD, Circuit Judge, DeVANE and WHITEHURST, District Judges

DeVANE, *District Judge:*

This an action brought by the Florida Railroad and Public Utilities Commission, and the members thereof, against The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I.C.C., 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission dated July 25, 1950, of which the report is made a part.

The order, complained of, directed the raising of rates and charges for the intrastate transportation of freight over the lines on all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in Interstate Commerce Commission under provisions of Section 13(3), (4) and Section 15(1) of the Interstate Commerce Act, (Title 49 USC, 13(3), (4); and 15(1)). The circumstances leading to the investigation by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946* 266, ICC, 537, the Interstate Commerce Commission, in response to a petition filed by all Class I railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue, the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charges throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166 *Increased Freight Rates, 1947*, 269 ICC 33; 270 ICC, 81; 270 ICC, 93 and 270 ICC, 403, the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning carriers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the interstate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation. (269 ICC, 33).

In the second report in this proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC, 81). In the third report, (270 ICC, 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in

amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In the fourth and final report in this case the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC, 403).

The parties are not in entire agreement as to the average percentage increases allowed by the Interstate Commerce Commission in its several decisions, but the question is not of importance in the decision of this case and the percentages used above are for illustrative purposes only and fairly well represent the increases authorized.

Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, the railroads operating in Florida, (as did the railroads operating in every other State in the United States), made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In Florida Commission Docket #1538, considering the increases granted by the Interstate Commerce Commission in its Docket #162, the Florida Commission granted the full increases requested except that no increases were allowed on 1) logs moving to the mills, 2) wet phosphate moving from the washer to the drying plant, 3) waste wood moving to retort or recovery plant, and 4) sugar cane moving to the mills. Also increases on pulpwood were limited to 9%.

In Docket #1466, by a series of orders, the Florida Commission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte #166 proceeding.

In Order #1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte #166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Fla.

3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.

4. No increases were allowed on fertilizer and fertilizing material.

5. Increases on road aggregates were limited to 10%.

6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the #1466(C) Order, the Florida Commission continued the 20% increases granted in its Order #1466(A), until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order #1466(D) these increases and exceptions were continued in effect until after the disposition of Docket #30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets, Ex Parte #162 and #166, with the exception of the 5% granted by the Interstate Commerce Commission in Ex Parte #166 and the commodity and class rate exceptions hereinbefore enumerated.

The case instituted by the carriers before the Interstate Commerce Commission (Docket #30140) was for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to also put into effect the increases in rates approved by the Interstate Commerce Commission for interstate traffic, but disapproved by the Florida Commission on intrastate traffic.

Since the Interstate Commerce Commission issued its order making the full interstate rates prescribed by it effective on intrastate traffic in Florida, certain changes have been made in rates applicable to road aggregates, wastewood, sugar cane, fertilizer and fertilizing materials, the latter applicable only on the Florida East Coast Railroad. Otherwise, rates prescribed by the Interstate Commerce Commission, for interstate traffic, have also been made effective by the Interstate Commerce Commission for the movement of intrastate traffic in Florida.

The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations.

The question, therefore, before the court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 I. C. C. 351, Northern Pacific Railway v. North Dakota, 236 U. S. 585, Norfolk & Western Railway v. West Virginia, 236 U. S. 605, and other cases to the same effect.

The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 U. S. C. 4281. In Railroad Commission v. Chicago, B. & Q. Railroad Company, 257 U. S. 563,

and again in Florida v. U. S., 292 U. S. 1, the Supreme Court of the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." And, again in North Carolina v. United States, 325 U. S. 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Interstate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services.

Plaintiffs contend that should the court find that the Interstate Commerce Commission is vested with authority to increase freight rates, generally, to enable the carriers to meet deficits from passenger operations, nevertheless, the order of the Interstate Commerce Commission, in this case, does not comply with all the requirements laid down by the Supreme Court of the United States in North Carolina v. United States, supra. We think it does.

While it is doubtful if the order of the Interstate Commerce Commission, in Docket #30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantage, preference of prejudice, as between persons and localities, in intrastate commerce in Florida on the one hand and interstate commerce on the other (Florida v. U. S., 282 U. S. 194), yet, it is clear from the evidence in the case that it did result in undue, unreasonable and unjust discrimination against

interstate commerce and undue preference as to intrastate commerce, in violation of Section 13(4) of the Interstate Commerce Act, in that it failed to place upon intrastate commerce the burden cast upon such commerce, by the order of the Interstate Commerce Commission, entered in Ex Parte #162 and #166, which was intended to provide needed revenue from both intrastate and interstate commerce, to meet the money requirements of the carriers. The Interstate Commerce Commisison found, in this case, that failure of the Florida Commission to authorize increases in the rates in question, resulted in a loss of, at least $915,325.00 per annum to the carriers. And, as evidence of the need for this revenue, counsel for the Florida Commission stated, on oral argument, and in their brief, that the three major railroads operating in Florida sustained deficits from passenger operations of $21,000,000.00 for the year, 1948, the last full year's operations involved in this case.

The intervening plaintiffs interested in specific rates involved in this case attacked the validity of the order of the Interstate Commerce Commission on the ground that the rates prescribed are so high that the carriers, in fact, lost revenue instead of gained revenue, which was the sole purpose of the increases in rates and the purpose sought to be accomplished failing, the order prescribing the rates is illegal. They introduced evidence before the Interstate Commerce Commission supporting their contention. The carriers introduced evidence denying the claims of the shippers. The Interstate Commerce Commission considered all this evidence and, after weighing it, decided against the intervening plaintiffs. This court does not have the authority to over-ride the decision of the Interstate Commerce Commission on this factual question, supported by evidence as it is in this record, Ohio v. U. S., 292 U. S. 498.

Plaintiffs contend further that conceding the power of the Interstate Commerce Commission to increase freight rates, solely for the purpose of obtaining needed additional revenue to meet passenger deficits, yet every shipper affected by such order had the right to put in issue before the Interstate Commerce Commission, and put in issue

before this court, the reasonableness of any specific rate applicable to any particular commodity.

The court is cited to and finds no authority that sustains this contention of the intervening plaintiffs. Moreover, if they were right in their contention the effect would be to nullify the Declared Policy of Congress, incorporated in the Interstate Commerce Act.

Since the Interstate Commerce Commission has been vested with the power to increase freight rates, generally, to give carriers needed additional revenue, increases of this character, in fairness to all, should be made to apply to intrastate as well as interstate commerce, otherwise unjust discrimination would exist between such commerce.

If the intervening plaintiffs are entitled to relief in so far as any specific individual rate is concerned he may take his case to the Interstate Commerce Commission and there secure any modification to which he is entitled. In *North Carolina* v. *United States*, *supra*, the Supreme Court on this point, said: "The very nature of such a broad general order requires that it contain a saving clause for future modification and adjustment of particular rates." This saving clause was incorporated in the order of the Interstate Commerce Commission in this case and certain of the rates incorporated in the original order entered by the Interstate Commerce Commission have already been modified or removed from the order and the court has no doubt that in the future additional modifications may be made where they are justified by the facts.

We conclude that the order of the Interstate Commerce Commission should be sustained.

Dated at Tallahassee, Florida, this 29th day of June, 1951.

(S) LEON MCCORD,
Circuit Judge.

(S) DOZIER A. DEVANE,
District Judge.

(S) GEORGE W. WHITEHURST,
District Judge.

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Plaintiffs*,

vs.

THE UNITED STATES OF AMERICA, *Defendant*.

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*.

FINAL JUDGMENT

This cause came on for final hearing before a Court consisting of Honorables Leon McCord, Circuit Judge, Dozier A. DeVane and George W. Whitehurst, District Judges.

Evidence was presented and arguments heard, and, for reasons stated in an Opinion filed herewith, it is considered, ordered and adjudged that the relief sought by plaintiffs herein be and the same is hereby denied; that plaintiffs take nothing by this suit and defendants go hence without day. The costs of this case shall be taxed by the Clerk upon an appropriate bill filed therefor against the Florida Railroad and Public Utilities Commission, plaintiff.

Done and ordered at Jacksonville, Florida, this 16th day of July, 1951.

(S) LEON MCCORD,
Circuit Judge.

(S) DOZIER A. DEVANE,
District Judge.

(S) GEORGE W. WHITEHURST,
District Judge.

APPENDIX "B"

Section 13 (3)

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13 (4)

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare,

or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."